

1 HB442
2 155828-2
3 By Representatives Vance, Boothe and Williams (J)
4 RFD: Public Safety and Homeland Security
5 First Read: 11-FEB-14

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8 SYNOPSIS: This bill would enable county and municipal
9 boards of education to approve in their
10 jurisdiction a process of civil enforcement of
11 offenses related to overtaking a school bus by
12 using automated detection devices, and allowing a
13 civil notice of violation to be issued by mail. It
14 would provide that the owner of the vehicle is
15 presumptively responsible but provide procedures to
16 transfer responsibility or to contest the notice of
17 violation.

18 This bill would allow a law enforcement
19 agency or a local governing entity, in consultation
20 with a school system, to enter an agreement with a
21 private contractor for the installation, operation,
22 notice processing, and administration of a school
23 bus automated device.

24 This bill would grant subject matter
25 jurisdiction to district and municipal courts to
26 adjudicate the civil notice.

1 This bill would provide procedures for civil
2 action taken pursuant to this act.

3 This bill would provide for the destruction
4 of all images and other recorded information within
5 certain time periods.

6 This bill would provide for appeals.

7 This bill would authorize civil fines.

8 This bill would provide that a person who
9 becomes responsible for payment of the civil fine
10 would not have the violation entered on his or her
11 driver's history and not suffer other adverse
12 consequences if the civil fine is timely paid.

13 This bill would provide that insurance
14 companies could not use a violation to set or
15 change insurance rates.

16 This bill would provide that failure to
17 timely pay a civil fine would result in civil
18 collection efforts by a county or a municipal board
19 of education.

20
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 Authorizing automated enforcement related to
26 overtaking a school bus in counties and municipalities as a
27 civil offense; authorizing a county or municipal board of

1 education to approve, in their respective jurisdiction, a
2 civil process of automated detection device of a school bus
3 violation enforcement; requiring certain procedures to be
4 followed by a county or municipal board of education using
5 automated school bus enforcement; making the owner of the
6 vehicle involved in a violation presumptively responsible for
7 payment of a civil fine, but providing procedures to contest
8 responsibility or transfer responsibility to another person;
9 providing for jurisdiction in district courts and in municipal
10 courts over the civil offenses; providing for procedures for
11 administrating this act; allowing a law enforcement agency or
12 a local governing entity to enter agreements with contractors
13 providing automated devices; providing for the destruction of
14 recorded information after certain time periods; and allowing
15 appeals to the circuit court.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 1. (a) This act shall be known
18 and may be cited as the "Alabama School Bus Safety Act."

19 (b) Any board may authorize a process of civil
20 enforcement of a school bus violation pursuant to the
21 procedures set out in this act.

22 (c) The provisions of this act shall not compel a
23 governing body or board to participate in the safety program
24 created herein.

25 Section 2. The following definitions and provisions
26 shall apply to this act:

1 (1) AUTOMATED DEVICE. Any camera or recording device
2 that uses a vehicle sensor and camera synchronized to record
3 by photograph or video the rear of a motor vehicle approaching
4 or overtaking a school bus that is stopped for the purpose of
5 receiving or discharging school children in violation of
6 Section 32-5A-154, Code of Alabama 1975.

7 (2) BOARD. A board of education or the governing
8 body of a school system.

9 (3) CONTRACTOR. A company that provides services to
10 a board or governing body including, but not limited to,
11 automated devices, citation processing, and collection of the
12 civil fines. None of the activities of the contractor shall be
13 construed as an agent providing or participating in private
14 investigative services or acting as a statutory authority
15 under open records laws.

16 (4) COURT. A district court, if a school bus
17 violation occurs in an unincorporated area or a municipal
18 court if a violation occurs in an incorporated municipality.

19 (5) GOVERNING BODY. A county commission, city
20 council, or city commission.

21 (6) LAW ENFORCEMENT AGENCY. A law enforcement agency
22 of a local governing body, or a school system that is
23 authorized to issue a citation for a violation of the state
24 vehicle law or of local traffic laws or regulations.

25 (7) OWNER. The meaning ascribed to "owner" in
26 Section 32-1-1.1, Code of Alabama 1975, except that the term
27 shall not include a motor vehicle rental or leasing company

1 when a motor vehicle registered by the company is being
2 operated by another person under a rental or lease agreement
3 with the company, in which event "owner" shall mean the person
4 to whom the vehicle is rented or leased; nor shall the term
5 include motor vehicles displaying a dealer license plate, in
6 which event "owner" shall mean the person to whom the vehicle
7 is assigned for use; nor shall the term include the owner of a
8 vehicle that has been reported stolen to a law enforcement
9 agency prior to the time of the violation, in which event
10 "owner" shall mean the person who is found guilty of stealing
11 the motor vehicle.

12 (8) SCHOOL BUS VIOLATION or VIOLATION. Any violation
13 of Section 32-5A-154, Code of Alabama 1975, as amended.

14 Section 3. (a) A board may approve the use of
15 automated devices to detect school bus violations by voting at
16 a meeting of the board to approve the adoption of an automated
17 school bus enforcement program.

18 (b) If approved by a board and authorized by
19 ordinance or resolution enacted by the governing body, the
20 board may enter into an agreement with a contractor for the
21 installation, operation, notice processing, administration and
22 maintenance of school bus automated devices on buses within
23 the school system's fleet whether owned or leased. Prior to
24 entering into a contract for the installation, operation,
25 notice processing, administration, and maintenance of school
26 bus automated devices, the board shall have entered into an
27 intergovernmental agreement with the appropriate law

1 enforcement agencies (municipal police department and/or
2 county sheriff) and the local governing body providing that
3 the appropriate law enforcement agency is willing to review
4 any violation occurring in its respective jurisdiction.

5 (c) A civil fine not to exceed three hundred dollars
6 (\$300) for a first offense, seven hundred fifty dollars (\$750)
7 for a second offense, and one thousand dollars (\$1,000) for
8 each subsequent offense in a 5-year period shall be imposed
9 for a school bus violation for which a notice of violation is
10 issued pursuant to this act. All such fines shall be paid,
11 after deducting costs to administer, operate, and maintain the
12 program, as follows: 40 percent to the county or municipal
13 governing body which contracted for the operation of a school
14 bus violation program through an intergovernmental agreement
15 with the board pursuant to paragraph (b); 40 percent to the
16 school system where the offense was committed; 10 percent to
17 the State Department of Education for school bus safety
18 initiatives; and 10 percent to the Alabama Department of
19 Public Safety for highway safety enforcement.

20 Section 4. (a) After review of the violation by law
21 enforcement, the governing body or contractor shall send the
22 owner of a vehicle that has been detected by the device as
23 being involved in a school bus violation a notice of violation
24 by U. S. mail. A notice of violation shall be mailed no later
25 than 14 days after being reviewed by law enforcement. In the
26 event there is more than one owner, the notice may be issued

1 to the first person listed on the title or other evidence of
2 ownership, or jointly to all listed owners.

3 (b) The notice of violation shall include at a
4 minimum each of the following items of information:

5 (1) The name and address of the person alleged to be
6 liable as the owner of the motor vehicle involved in the
7 violation.

8 (2) The license tag number of the vehicle.

9 (3) The violation charged.

10 (4) The date, time, and location where the violation
11 occurred.

12 (5) The photographic images and the online video of
13 the vehicle that are captured by the automated device. The
14 image or video shall be reviewed by a law enforcement officer
15 who shall electronically certify the notice of violation. The
16 image or video may not contain images of the face of the
17 driver or passengers in the vehicle.

18 (6) The amount of the civil fine along with the
19 time, place, and manner for payment of the fine which shall
20 include the option to pay the fine by electronic means.

21 (7) The procedure under which the notice of
22 violation may be contested, or the procedure and conditions
23 under which responsibility for payment of the civil fine may
24 be transferred to another individual who was operating the
25 vehicle at the time of the violation.

26 (8) That failure to timely pay, contest, or transfer
27 responsibility to another shall constitute an admission that

1 the owner is responsible, and that failure to pay a fine for
2 which the owner is determined to be responsible may result in
3 the inability to obtain or renew in Alabama the license of the
4 vehicle involved or to obtain or transfer its title in
5 Alabama, or for the person held to be responsible to obtain or
6 renew an Alabama driver's license, unless and until the civil
7 fine is paid to the local governing body.

8 (9) The date by which the local governing body must
9 receive payment of the civil fine, receive notice by the owner
10 that responsibility is being transferred to another, or
11 receive notice by the owner that the notice of violation is
12 being contested, shall be clearly and prominently stated on
13 the notice of violation. The time may not be less than 30 days
14 after the notice of violation is mailed.

15 (c) All recorded video images and other photographic
16 information obtained through the use of school bus violation
17 detection monitoring systems authorized in this act that do
18 not identify a violation shall be destroyed by any city, town,
19 school system or contractor within 90 days of the date the
20 image was recorded, unless otherwise ordered by a court of
21 competent jurisdiction. All photographic and other recorded
22 information that identifies a violation shall be destroyed
23 within 30 days of final disposition of proceedings related to
24 the enforcement or defense of a violation, unless otherwise
25 ordered by a court of competent jurisdiction.

26 (d) All photographic evidence regardless of whether
27 it is a still photograph or video shall remain the sole

1 property of the board and shall be available to a third party,
2 other than the alleged violator, pursuant only to a valid
3 court order.

4 (e) Except as expressly provided, all civil actions
5 based on evidence produced by a school bus violation detection
6 monitoring system shall follow the procedures set out in this
7 act.

8 Section 5. The owner of a vehicle that has been
9 issued a notice of violation shall be responsible for payment
10 of the civil fine unless the owner successfully transfers
11 responsibility, there is an adjudication that no violation
12 occurred, or there is an otherwise lawful determination that
13 no civil penalty shall be imposed. All owners of a vehicle who
14 are mailed or receive a notice of violation shall be jointly
15 and severally liable for payment of the civil fine. The county
16 or municipality may collect the civil fine in the same manner
17 as any other debt owed to the county or municipality.

18 Section 6. (a) The owner shall not be responsible
19 for payment of the civil fine resulting from a notice of
20 violation if each of the following conditions apply:

21 (1) The vehicle was operated at the time of the
22 violation by a person who was not the owner, or an agent or
23 employee of the owner.

24 (2) The owner signs and timely transmits to the
25 governing body on the form provided with the notice of
26 violation and in accordance with the procedure set out on the
27 notice of violation a statement that he or she was not

1 operating the vehicle at the time of the violation, and that
2 the person who was operating the vehicle was not the agent or
3 employee of the owner.

4 (3) The owner timely transmits to the governing body
5 on the form provided with the notice of violation and in
6 accordance with the procedure set out on the notice of
7 violation the name and mailing address of the person who was
8 operating the vehicle.

9 (4) The civil fine is paid by any person, unless
10 there is adjudication that no violation occurred or there is
11 otherwise a lawful determination that no civil penalty shall
12 be imposed.

13 (b) Whenever a county or municipality timely
14 receives the information required from the owner to transfer
15 responsibility, the county, municipality, or its contractor
16 shall issue a new notice of violation to the person to whom
17 the owner transferred responsibility with an explanation as to
18 why the person is receiving the notice of violation, in the
19 same manner as if the person were the owner of the vehicle.
20 The person shall be responsible for payment of the civil fine
21 unless the person either:

22 (1) Timely returns a signed statement on a form
23 provided with the notice of violation that he or she was not
24 the operator and declining responsibility, in which case
25 responsibility shall fall back to the owner.

26 (2) Admits to being the operator but denies
27 committing a violation, in which case the person may contest

1 the notice of violation in the same manner as the owner may
2 contest the notice of violation.

3 (c) In cases in which a person other than the owner
4 denies he or she was the operator and declines responsibility,
5 a new notice shall be issued to the owner stating that the
6 other person declined responsibility and giving the owner the
7 option of paying the civil fine or contesting the violation by
8 a stated date that shall be not less than 20 days from the
9 mailing of the new notice. The owner may not attempt to
10 transfer responsibility more than one time using this
11 procedure. If the owner chooses to contest the notice of
12 violation after the owner has unsuccessfully attempted to
13 transfer responsibility using this procedure, and the owner
14 claims in defense that another person was the operator of the
15 vehicle, the court may take appropriate action to cause the
16 owner and the other person to appear at the same hearing to
17 determine responsibility.

18 Section 7. (a) No person shall be responsible for
19 payment of a civil fine for a notice of violation issued under
20 this act if the operator of the vehicle that is the subject of
21 the notice of violation is adjudicated to have not committed a
22 violation or there is otherwise a lawful determination that no
23 civil penalty may be imposed. Any person receiving a notice of
24 violation pursuant to this act, in accordance with the
25 procedure set out in this act and on the notice of violation,
26 may contest the notice of violation by obtaining a hearing in
27 the court.

1 (b) District and municipal courts of this state are
2 hereby vested with the power and jurisdiction to adjudicate a
3 notice of violation issued pursuant to this act as a civil
4 offense whenever the offense is alleged to have occurred
5 within the geographic jurisdiction of the court.

6 (c) The following procedures shall apply to
7 proceedings to contest a notice of violation issued pursuant
8 to this act:

9 (1) Upon receipt of a timely notice that the person
10 receiving the notice of violation is contesting the notice,
11 the governing body shall cause the case to be docketed in
12 court and shall issue notice of the hearing date.

13 (2) The issuance of a notice of violation shall be
14 prima facie evidence that the person who received the notice
15 of violation was operating the vehicle at the time of the
16 violation.

17 (3) In the event there is a dispute between the
18 owner and another as to which person was operating the vehicle
19 at the time of the alleged violation, or a dispute between
20 joint owners, it shall be presumed that the owner was
21 operating the vehicle, and in the event there are joint
22 owners, the presumption shall follow the order the owners are
23 listed on the title or other evidence of ownership. However, a
24 court may determine the identity of the operator of the
25 vehicle based on any admitted evidence.

26 (4) The notice of violation, any evidence of the
27 violation produced by a device, and evidence of ownership of a

1 vehicle as shown by copies or summaries of official records
2 shall be admissible into evidence without foundation.

3 (5) All other matters of evidence and procedure not
4 specifically addressed in this act shall be subject to the
5 rules of procedure as provided in this act. On any appeal in
6 the circuit court the procedures shall be as for any civil
7 case in circuit court.

8 (6) The court shall apply the preponderance of the
9 evidence standard in adjudicating any notice of violation.

10 (7) Whenever payment of a civil fine is due, the
11 amount of the civil fine may not be decreased and the
12 liability may be satisfied only by payment.

13 (8) A civil fine assessed under this act shall not
14 exceed three hundred dollars (\$300) for a first offense, seven
15 hundred fifty dollars (\$750) for a second offense, and one
16 thousand dollars (\$1,000) for each subsequent offense in a
17 five-year period, and court costs shall be assessed only in
18 contested cases in the same manner and in the same amounts
19 prescribed for a violation prosecuted as a misdemeanor under
20 Section 32-5A-154, Code of Alabama 1975. Court costs collected
21 pursuant to this act shall be distributed in the same manner
22 as prescribed by law for the distribution of court costs for
23 misdemeanor violations. An additional fee of ten dollars (\$10)
24 shall be collected by the district or municipal court in
25 connection with notices issued under this act to be paid to
26 the Alabama Criminal Justice Information Center and deposited
27 in the State Treasury to the credit of the Criminal Justice

1 Information System Automation Fund as compensation for record
2 keeping and transaction processing with respect to violation
3 notices issued under this act. Any civil fine assessed under
4 this act and collected by the court shall be remitted pursuant
5 to subsection (d) of Section 3.

6 Section 8. Persons who contest a notice of violation
7 and are adjudicated by the court to be responsible for the
8 civil fine may appeal the adjudication for a trial de novo to
9 the circuit court of the county in which the district or
10 municipal court is located, using the procedures that apply to
11 criminal convictions with the following qualifications:

12 (1) The proceedings shall retain their civil nature
13 on appeal with the circuit court applying the preponderance of
14 the evidence standard.

15 (2) The person appealing must, as a condition
16 precedent to appeal, pay the civil fine in full, and failure
17 to do so shall divest the circuit court of jurisdiction. If on
18 appeal the circuit court finds that the person is not
19 responsible for payment of the civil fine, the county or
20 municipality shall refund the same without interest within 15
21 days of receipt of notice of the disposition from the circuit
22 court. If the person is adjudicated by the circuit court to be
23 responsible for payment of the civil fine, then no additional
24 fine may be imposed by the circuit court, but court costs of
25 the circuit court shall be owed by the person adjudicated
26 responsible with 100 percent of the court costs retained by
27 the circuit court. Court costs in the circuit court shall be

1 calculated as are court costs for criminal appeals from the
2 district or municipal court, and in the event the circuit
3 court finds the person appealing not to be responsible, no
4 court costs shall be owed by the county or municipal board of
5 education.

6 (3) Regardless of the civil nature of the
7 proceedings, the circuit court, in its discretion and for its
8 administrative convenience, may assign case numbers as for
9 criminal appeals and place the appeals on criminal dockets in
10 the same manner as criminal appeals from a district or
11 municipal court.

12 Section 9. In the event the evidence produced by an
13 automated device does not produce an image or video of the
14 license plate with sufficient clarity for a law enforcement
15 officer to determine the identity of the owner, and if the
16 identity cannot otherwise be reliably established, then no
17 notice of violation may be issued pursuant to this act.

18 Section 10. (a) Except in cases where there is
19 adjudication that no violation occurred or there is otherwise
20 a lawful determination that no civil penalty shall be imposed,
21 any unpaid civil fine authorized by this act:

22 (1) May result in nonissuance or nonrenewal of an
23 Alabama vehicle license for the vehicle involved in the
24 violation.

25 (2) May cause the title of the vehicle involved in
26 the violation not to be transferred in Alabama.

1 (3) May cause the person held responsible for the
2 violation to be ineligible to obtain or renew an Alabama
3 driver's license, unless and until the civil fine plus any
4 late fee is paid to the county or municipal governing body.

5 (b) No person may be arrested or incarcerated for
6 nonpayment of a civil fine.

7 (c) A governing body may contract with a collection
8 service for the purpose of collecting any unpaid civil fine
9 authorized by this act.

10 (d) In cases in which the governing body has given a
11 notice of nonpayment to the appropriate licensing official and
12 a hold has been placed on the vehicle license, title transfer,
13 or driver's license, and when thereafter the civil fine has
14 been paid, the governing body shall transmit notice of the
15 payment to the appropriate licensing official, who shall
16 remove such hold.

17 Section 11. (a) A civil violation of this act shall
18 not result in any punishment of a criminal nature, shall not
19 count as points and shall not be entered into any person's
20 official driving history, shall not be considered a criminal
21 conviction for any purpose, shall not be used to increase or
22 enhance punishment for a subsequent offense of a civil or
23 criminal nature, shall not be considered a moving violation,
24 and shall not be used by any insurance company to determine or
25 affect premiums or rates.

26 (b) The fact that a person is held liable or
27 responsible for a civil fine for a violation shall not be used

1 as evidence that the person was guilty of negligence or other
2 culpable conduct, but this fact shall not preclude evidence
3 generated by a device from being used as evidence in other
4 proceedings when ordered by a court of competent jurisdiction.

5 Section 12. Adoption by a board of the procedures
6 under this act and the enforcement of this act by a governing
7 body shall not affect current procedure and prosecutions
8 commenced by issuance of a uniform traffic ticket and
9 complaint by a law enforcement officer or otherwise. The
10 issuance of a notice of violation as authorized by this act
11 shall be subordinate to the issuance of a uniform traffic
12 ticket and complaint for the same action if issued by a sworn
13 law enforcement officer, and issuance of a uniform traffic
14 ticket and complaint for a school bus violation shall preclude
15 issuance of a notice of violation as authorized by this act.
16 In the event both a uniform traffic ticket and complaint and a
17 notice of violation as authorized by this act are issued for
18 the same action, the one issued by a sworn law enforcement
19 officer pursuant to Section 32-5A-154, Code of Alabama 1975,
20 shall control and shall constitute a defense to the other.

21 Section 13. (a) Any person who is held responsible
22 for payment of a civil fine as provided herein, but who was
23 not actually operating the involved vehicle, who timely and
24 properly followed the procedure to transfer responsibility but
25 is ultimately held responsible because of the person's
26 ownership of the vehicle, and who actually pays the civil
27 fine, shall have a cause of action against the person who was

1 operating the vehicle for the amount of the civil fine
2 actually paid plus a reasonable attorney fee, without regard
3 to the rules regarding joint and several liability,
4 contribution, or indemnity.

5 (b) As a condition precedent to the bringing of a
6 civil action under subsection (a), the person held responsible
7 for payment of the civil fine shall first make written demand
8 on the other person for reimbursement of the civil fine,
9 giving a minimum of 60 days to remit payment, and if
10 reimbursement is fully made within the 60 day period then the
11 cause of action shall be extinguished and no attorney fees or
12 other damages shall attach to the reimbursement.

13 Section 14. The provisions of this act are
14 severable. If any part of this act is declared invalid or
15 unconstitutional, that declaration shall not affect the part
16 which remains.

17 Section 15. This act shall become effective on the
18 first day of the third month following its passage and
19 approval by the Governor, or its otherwise becoming law.